

**In the
Indiana Supreme Court**

CAUSE NUMBER: 94S00-0809-MS-

ORDER AMENDING RULES OF PROCEDURE FOR POST-CONVICTION REMEDIES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rule PC 2 § 2 of the *Indiana Rules of Procedure for Post-Conviction Remedies* is amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES OF PROCEDURE FOR POST-CONVICTION RELIEF

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Rule PC 2. Belated Appeals

Eligible defendant defined. An "eligible defendant" for purposes of this Rule is a defendant who, but for the defendant's failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal.

Appellate court jurisdiction. Jurisdiction of an appeal under this Rule is determined pursuant to Rules 4 and 5 of the Indiana Rules of Appellate Procedure by reference to the sentence imposed as a result of the challenged conviction or sentence.

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Section 2. Belated Motion to Correct Error.

(a) *Required Showings.* An eligible defendant convicted after a trial or plea of guilty may petition the court of conviction for permission to file a belated motion to correct error addressing the conviction or sentence, if:

- (1) no timely and adequate motion to correct error was filed for the defendant;
- (2) the failure to file a timely motion to correct error was not due to the fault of the defendant; and
- (3) the defendant has been diligent in requesting permission to file a belated ~~related~~-motion to correct error under this rule.

This amendment shall take effect January 1, 2009.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each Circuit Court in the State of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of September, 2008.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.